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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 10, 1200 SIXTH AVENUE
SEATTLE, WASHINGTON

IN THE MATTER OF:

NO. 1091-05-10-106

AMSTED INDUSTRIES, INC.,
Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended
by the Superfund Amendments and
Reauthorization Act of 1986,
42 U.S.C. § 9606(a).

AMENDED ORDER ON CONSENT
FOR NECESSARY RESPONSE
ACTION PURSUANT TO 42
U.S.C. § 9606

RE: SOUTH TACOMA FIELD
FORMER BRASS FOUNDRY

I. INTRODUCTION

1. This Amended Administrative Consent Order ("Amended Consent Order") is issued to Amsted Industries, Inc. ("Amsted"), as an individual and owner of the former brass foundry site herein, by the United States Environmental Protection Agency ("EPA") pursuant to Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 100 Stat. 9613 (1986). By signing this Amended Consent Order below, Amsted consents to issuance of the Amended Order and agrees that the Amended Order supersedes and replaces the May 1991 Order.



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II. JURISDICTION

2. This Amended Consent Order is issued pursuant to the authority conferred on the President by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), as amended; delegated to the Administrator of the EPA by Executive Order 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the EPA Regional Administrators and the EPA Assistant Administrator for Solid Waste and Emergency Response by the EPA Delegation Manual Sections 14-14, 14-14-A and 14-14-C. This authority is conferred on the EPA Region 10 Director, Hazardous Waste Division, and further redelegated to the Superfund Branch Chief, Hazardous Waste Division, by Regional Redelegation Order signed by the Regional Administrator.

III. EPA NOT BOUND TO ACT

3. Where the terms of this Amended Order create a duty on the part of Amsted to perform some act or to refrain from acting, the words "will," "expect," and "shall," when used in reference to an action by EPA, are intended only as a condition precedent to Amsted's duty and not as a duty of EPA to perform. However, Amsted shall not be obligated under this Amended Order to perform a duty to which EPA action is a condition precedent unless and until EPA performs such action.

IV. JUDICIAL REVIEW

4. In accordance with Section 113(h) of CERCLA, 42 U.S.C § 9613(h), as amended, Amsted waives its right to seek judicial pre-enforcement review of the issuance of this Amended Order.

1 V. PURPOSES

2 5. In entering into this Amended Consent Order, the general
3 mutual objectives of EPA and Amsted, which are set forth
4 specifically in the Statement of Work and further outlined in the
5 attached Work Plan are:

6 A. To take action necessary to stabilize the site, and
7 minimize contaminant migration to groundwater. This removal
8 action will address two monitoring wells that are located on the
9 Amsted property, Monitoring Well No. 2 (MW-2) and Monitoring Well
10 No. 4 (MW-4), that, because of their condition, pose a potential
11 threat to the groundwater. Monitoring Well No. 4 appears to have
12 been vandalized, because its well casing was broken off and rocks
13 and debris were found inside. (Respondent has completed the work
14 to properly abandon Monitoring Well No. 4.) Monitoring Well No.
15 2 (MW-2) contains a heavy hydrocarbon product. Investigation of
16 the material in the well has revealed that it is highly viscous
17 and removal options must be further investigated. The Respondent
18 has agreed to remove the hydrocarbon product from Monitoring Well
19 No. 2 without regard to whether the hydrocarbon product is
20 regulated under CERCLA.

21 B. To commence and complete certain removal and site
22 stabilization activities to include abandonment of vandalized
23 monitoring well (MW-4); sampling of the product in monitoring
24 well (MW-2); assessment of the removal of the product from MW-2
25 and the affected saturated and unsaturated zones; removal of the
26 product from MW-2 and the affected saturated and unsaturated

1 zones; storage, treatment, and/or disposal of contaminated
2 materials that are removed; and providing recommendations for
3 further investigations, if necessary, concerning the impacts of
4 the hydrocarbon product on the affected saturated and unsaturated
5 zones.

6 The term "removal" herein refers to a broad range of
7 potential responses at the site, including, but not limited to,
8 monitoring of product, physical removal of product, or other
9 appropriate actions embodied in work plans submitted by
10 Respondent and reviewed and approved by EPA. The specifics of
11 the "removal" phase will be the subject of an additional Work
12 Plan to be submitted to EPA by Respondent for review and
13 approval. The work plan addressing the "removal" shall be
14 submitted by Respondent to EPA within a reasonable time to be
15 agreed upon by the parties, but in no event shall the reasonable
16 time frame exceed 90 days after the completion of the work
17 described in the Kennedy/Jenks Consultants Work Plan entitled
18 "Well Installation and Monitoring" dated December 1991. In the
19 event the 90 day period is no longer appropriate, the Respondent
20 may petition in writing the EPA RPM for an extension of time.
21 Any extension of time hereunder shall be agreed to in writing by
22 the EPA RPM.

23 C. To accomplish the aforementioned in accordance with
24 EPA's approved Statement of Work (Attachment A) and Work Plan
25 (Attachment B), including any EPA approved supplemental work
26 plans which are developed at later phases of the project. EPA

1 approval(s) under Section V (C) shall be in writing and shall be
2 incorporated by reference into this Amended Order.

3 D. To accomplish the foregoing in a manner consistent
4 with the National Contingency Plan as amended ("NCP"), 40 C.F.R.
5 Part 300 (1990), CERCLA, as amended, and with applicable EPA
6 guidance documents and policies.

7 E. To undertake the actions contemplated herein in a
8 manner that will contribute to the efficient performance of the
9 ongoing RI/FS as well as any long term remedial action with
10 respect to the releases and/or threatened releases addressed by
11 this Amended Order.

12 VI. DISCLAIMER

13 6. By signing this Amended Consent Order and taking
14 actions under this Amended Order, Amsted does not necessarily
15 agree with EPA's Findings of Fact and Conclusions of Law.
16 Furthermore, the participation of Amsted in this Amended Order
17 shall not be considered an admission of liability for any purpose
18 in any proceeding, and is not admissible as evidence against
19 Amsted in any judicial or administrative proceeding other than a
20 proceeding by the U.S., including EPA, to enforce this Amended
21 Consent Order. Amsted retains its right to assert claims against
22 other potentially responsible parties at the site. However,
23 Amsted agrees not to contest the validity or terms of this
24 Amended Order in any action brought by EPA to enforce its terms.
25 This Amended Order shall not be used as evidence or as collateral
26 estoppel against Amsted in any action or proceeding other than an

1 action or proceeding to enforce the terms of this Amended Consent
2 Order.

3 VII. FINDINGS OF FACT

4 7. The Griffin Wheel Brass Foundry (hereinafter referred to
5 as the "former brass foundry," "site," or "facility") is a
6 facility as defined in Section 101(9) of CERCLA, 42 U.S.C.
7 §9601(9). It is the location of a former foundry and journal
8 bearing manufacturing operation located in the City of Tacoma,
9 Washington. The major portion of the site consists of
10 approximately 2.5 acres of land, bounded on the east by Proctor
11 Street and on the west by Madison Street. Attachment A contains
12 a diagram of the site.

13 8. The entire site is within the confines of the South
14 Tacoma Field portion of the Commencement Bay - South Tacoma
15 Channel site, which was placed on the Superfund National
16 Priorities list (40 C.F.R. Part 300, Appendix B) on
17 September 8, 1983 (48 Fed. Reg. 40658).

18 9. Amsted Industries is a Delaware Corporation authorized
19 to do business in the state of Washington. Amsted Industries'
20 corporate headquarters are located in Chicago, Illinois. The
21 mailing address of Amsted Industries for purposes of this order
22 is:

23 Mr. Edward J. Brosius
24 Amsted Industries, Inc.
25 205 N. Michigan Avenue
44th Floor
Chicago, Illinois 60601

26 10. Amsted Industries is the property owner of the site.

1 It is the parent company of the Griffin Wheel Brass Foundry.
2 Griffin Wheel used the site for the manufacture of brass journal
3 bearings and linings from 1897 until 1980. From 1890 to 1897 the
4 site was owned and operated by American Foundry. Subsequent
5 owners operated the foundry until its closure in May 1980.

6 11. The manufacture of journal bearings and linings
7 resulted in the generation of byproducts (slag and dust)
8 containing significantly elevated levels of lead and other heavy
9 metals.

10 12. The data produced during site investigations conducted
11 by Black and Veatch, Benlab, Earth Consultants and most recently
12 by Amsted's consultant, Kennedy/Jenks/Chilton, revealed areas of
13 extensive heavy metals contamination of the surface and
14 subsurface soils at the site. Hazardous substances discovered in
15 soils include, but may not be limited to, cadmium, copper, lead
16 and zinc. Some of the most heavily contaminated locations
17 identified in the Kennedy/Jenks/Chilton report were Test Pits No.
18 4 and No. 6 and Surface Soil Samples No. 1, No. 2 and No. 5.

19 13. The highest concentration of lead and other heavy
20 metals were found in concentrations up to 150,000 ppm in the
21 foundry buildings and up to 140,000 ppm in on-site soils.

22 14. Lead is a hazardous substance which can adversely
23 affect the reproduction and central nervous systems in mammals.

24 15. Copper is among the more mobile metals in the
25 environment. It is toxic to humans as well as other species.
26 High levels of zinc in the diet have been shown to retard growth

1 and produce defective mineralization of bone.

2 16. On August 28, 1989, Amsted Industries entered into an
3 Administrative Order on Consent with EPA to demolish the former
4 brass foundry building; remove underground storage tanks in the
5 vicinity of the foundry; and secure the area with a six foot
6 chain link fence.

7 17. In February 1991, EPA was informed by
8 Kennedy/Jenks/Chilton, the contractor conducting the RI/FS for
9 the overall South Tacoma Field Superfund site, that several feet
10 of a heavy hydrocarbon product was observed in monitoring well
11 MW-2 during an inspection of South Tacoma Field wells which was
12 conducted in conjunction with the RI groundwater investigation.

13 18. In January 1990, three underground storage tanks
14 containing residual amounts of petroleum product ranging in size
15 from 275 gallons to 9,000 gallons were removed. All three
16 underground tanks were at the northern end of the foundry
17 building in the vicinity of the monitoring well (MW-2) in which
18 the hydrocarbon product was found. Based on visual inspection,
19 it was evident that some of the hydrocarbon product from these
20 tanks leaked into the surrounding soils. Analyses conducted on
21 the surrounding soils indicated high levels of Total Petroleum
22 Hydrocarbons (30,018 ppm) and the presence of polynuclear
23 aromatic hydrocarbons (PAH). Visually contaminated soil weighing
24 20.74 tons and occupying a volume estimated between 10 to 14
25 cubic yards was removed and replaced with bank run gravel. The
26 space occupied by the underground tanks was also filled with bank

1 run gravel. Samples of the liquid product in the three tanks in
2 question were drawn and analyzed for disposal purposes. These
3 samples indicated heavy metal and polynuclear aromatic
4 hydrocarbon contamination in the areas sampled.

5 19. PAHs are generally toxic by inhalation and ingestion.
6 Exposure to PAHs may result in a variety of effects, depending on
7 the compound. PAHs include known and suspected carcinogens, as
8 well as noncarcinogens.

9 20. The groundwater beneath the Amsted property and the
10 entire South Tacoma Field Superfund site forms the recharge
11 aquifer for the City of Tacoma's (Washington) supplemental
12 drinking water source.

13 VIII. CONCLUSIONS OF LAW

14 Based upon the foregoing Findings of Fact and the
15 information available to it, EPA hereby makes the following
16 Conclusions of Law:

17 20. The site is a facility as defined in Section 101(9) of
18 CERCLA, 42 U.S.C. § 9601(9), as amended.

19 21. Amsted is a person as defined in Section 101(2) of
20 CERCLA, 42 U.S.C. § 9601(2), as amended.

21 22. Certain substances at the site including those
22 described in the Findings of Fact are hazardous substances,
23 pollutants or contaminants, as defined in Sections 101(14) and
24 101(33) respectively, of CERCLA, 42 U.S.C. §§ 9601(14) and
25 9601(33), as amended.

26 23. The presence of, and potential migration of hazardous
27

1 substances, pollutants, or contaminants found at the site,
2 constitute an actual or substantial threat of "release" into the
3 "environment," as those items are defined in Section 101(22) and
4 101(8) respectively, of CERCLA, 42 U.S.C. §§ 9601(22), and
5 9601(8), as amended.

6 24. The presence and potential migration of hazardous
7 substances, pollutants, or contaminants at the site may present
8 an imminent and substantial endangerment to the public health,
9 welfare or the environment because of an actual or threatened
10 release of such substances into a drinking water recharge
11 aquifer.

12 25. Conditions at the site meet the criteria for a removal
13 action as stated in the NCP, 40 C.F.R. § 300.415.

14 26. Amsted is the land owner of the site and is a
15 responsible party pursuant to Section 107 of CERCLA, 42 U.S.C.
16 § 9607, as amended.

17 27. Amsted is a person who, with respect to the site, is
18 liable to the United States for the exoneration or reimbursement
19 of the United States for all costs of the removal and remedial
20 action(s) ("response actions") incurred by the United States
21 which are not inconsistent with the National Contingency Plan or
22 CERCLA, as amended.

23 IX. STIPULATIONS

24 28. By the signature appearing below, Amsted hereby
25 consents and agrees:

26 A. To issuance of this Amended Consent Order;

1 B. To perform and comply with all provisions of this
2 Amended Consent Order;

3 C. To refrain from disputing either federal
4 jurisdiction or the general authority of EPA to issue this
5 Amended Consent Order;

6 D. That in any proceeding brought by EPA to enforce
7 this Amended Consent Order, the only issues to be litigated shall
8 be those related to Amsted's compliance with this Amended Order
9 and performance of its terms and conditions;

10 E. To waive any rights Amsted may have, as provided in
11 42 U.S.C. § 9606(b)(2), to seek reimbursement of funds expended
12 pursuant to this Amended Consent Order from the Hazardous
13 Substance Response Trust Fund; and

14 F. Solely for the purpose of this Amended Consent
15 Order, not to contest the determination by EPA that conditions at
16 the site may present an imminent and substantial endangerment to
17 the public health or welfare or the environment because of an
18 actual or threatened release of hazardous substances, pollutants,
19 or contaminants.

20 X. WORK TO BE PERFORMED

21 29. Pursuant to § 106(a) of CERCLA, 42 U.S.C. § 9606(a), as
22 amended, and in accordance with the attached Statement of Work
23 and Work Plan it is hereby ordered that Amsted Industries shall
24 implement the Statement of Work and the attached Work Plan for:
25 (1) the abandonment of MW-4; (2) the necessary groundwater and
26 soil sampling to determine the extent of hydrocarbon product

1 contamination initially found in MW-2; (3) the assessment of
2 removal options for the hydrocarbon product from the affected
3 saturated and unsaturated zones; (4) the removal of the
4 hydrocarbon product from MW-2; (5) the assessment of the impacts
5 to groundwater and soils; (6) the recommendation of follow-up
6 investigations under the RI/FS; and (7) other site stabilization
7 activities that may be deemed necessary to protect human health
8 and the environment. Specific tasks to be undertaken by Amsted
9 Industries are detailed in the Statement of Work and the attached
10 Work Plan.

11 30. The Statement of Work and the attached Work Plan
12 appended hereto as Attachments A and B, respectively, are
13 incorporated by reference into this Amended Order.

14 31. Amsted Industries shall conduct removal operations in
15 such a manner, and only at such times, as to prevent and/or
16 minimize the further release of hazardous substances from the
17 site, in accordance with the Statement of Work and the attached
18 Work Plan. All media monitoring and protection measures shall be
19 conducted as specified in the EPA-approved Statement of Work, the
20 attached Work Plan, and the January 14, 1991, Health and Safety
21 Plan for the overall South Tacoma Field RI/FS.

22 32. Amsted Industries shall insure that all waste(s)
23 generated from removal actions including, but not limited to,
24 hydrocarbon product in monitoring well No. MW-2, wastewaters, and
25 investigation-derived waste are properly characterized as to
26 their hazardous nature and disposed of in accordance with the

1 State of Washington Administrative Environmental Standards,
2 particularly those standards governing the management of
3 hazardous waste and solid waste, applicable RCRA requirements,
4 including Land Disposal Restrictions, and other RCRA Subtitle C
5 requirements, and the Superfund Off-Site Disposal Policy, as
6 applicable.

7 33. Amsted Industries shall perform all work in a timely
8 manner and in accordance with timeframes identified in the
9 Statement of Work and attached Work Plan. Requirements of this
10 Amended Order shall not be deemed to have been satisfied until a
11 project report has been submitted and the report, final site
12 conditions, and recommendations for any follow-up investigations
13 appropriate for the RI/FS have received written EPA approval.

14 XI. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

15 34. All of Amsted's actions shall be in accordance with
16 Subpart F of the NCP (40 C.F.R. §§ 300.61-300.71) in effect on
17 the date of this Amended Order and CERCLA, as amended by the
18 Superfund Amendments and Reauthorization Act of 1986.

19 XII. DESIGNATION OF PROJECT COORDINATORS

20 35. Not later than five (5) days after the effective date
21 of this Amended Order, Amsted and EPA shall each designate a
22 Project Coordinator and a substitute. EPA shall also designate
23 an On-Scene Coordinator, who may, but need not be, the Project
24 Coordinator. Each Project Coordinator shall be responsible for
25 overseeing his/her principal's implementation of this Amended
26 Order. To the extent possible, all communication between EPA and

1 Amsted (including communication by letter, reports, etc.),
2 concerning activities related to this Amended Order shall be
3 directed to Amsted's Project Coordinator and EPA's Project
4 Coordinator and/or On-Scene Coordinator.

5 36. Amsted's Project Coordinator shall be a qualified,
6 competent person with experience in hazardous waste site
7 investigations, having the skills necessary to direct and
8 supervise the activities under this Amended Order. Prior to
9 commencement of activities at the Site, Amsted shall notify EPA
10 in writing of:

11 A. the name, title, qualifications, affiliations and
12 background of the individual selected as the Project Coordinator;
13 and

14 B. the name, address, qualifications, affiliations and
15 proposed scope of work of all contractors and subcontractors
16 expected to be used in performing activities to carry out the
17 provisions of this Amended Order. At the time the contract(s) is
18 (are) entered, the qualified contractor(s) and/or
19 subcontractor(s) may not have been suspended, debarred, or
20 voluntarily excluded under 40 C.F.R. Part 32 or under the Federal
21 Acquisition Regulations 48 C.F.R. 9.4 (the contractors must not
22 appear on the General Services Administration List of Excluded
23 Parties). If Amsted wishes to use additional contractors and
24 subcontractors subsequent to commencement of activities at the
25 Site for an element of work which exceeds \$10,000 in cost, it
26 shall notify EPA in writing of their names, addresses,

1 qualifications, affiliations and proposed scope of work at least
2 five (5) days prior to hiring such contractors and
3 subcontractors. Additional contractors and subcontractors shall
4 be subject to the same restrictions pertaining to suspension,
5 debarment and voluntary exclusion as all initial contractors and
6 subcontractors.

7 37. Amsted may change its Project Coordinator by sending
8 written notification to EPA no later than five (5) days before
9 the date of such change. The written notification to EPA shall
10 contain the name, title, affiliations, qualifications and
11 background of the individual selected as Project Coordinator.
12 EPA may change its Project Coordinator and/or On-Scene
13 Coordinator by sending a written notification of such change to
14 Amsted no later than five (5) days before the date of such
15 change.

16 XIII. DESIGNATION OF ON-SCENE COORDINATOR

17 38. EPA will designate one or more persons as an "On Scene
18 Coordinator" for the facility and activities mentioned in this
19 Amended Order, who shall have the authority specified and
20 indicated in the NCP as set forth in 40 C.F.R. Part 300, as
21 amended. Nothing in this Amended Order shall be construed to
22 diminish that authority, nor construed as a waiver of any rights
23 Amsted may have to challenge or contest actions taken pursuant to
24 that authority which are not required by this Amended Order. If
25 the On-Scene Coordinator determines that conditions at the site
26 may present an immediate and significant risk to public health,

1 welfare, or the environment, the On-scene Coordinator may take
2 any actions to abate such risks as specified in the National
3 Contingency Plan, including ordering cessation of work,
4 conducting any task required by this Amended Order, and taking
5 any appropriate response action. The EPA On-Scene Coordinator
6 may authorize minor field deviations which shall be documented in
7 writing and signed by both Amsted's Project Coordinator and the
8 On-Scene Coordinator within five (5) working days of
9 authorization.

10 XIV. ABSENCE OF EPA COORDINATOR(S)

11 39. The absence of the EPA Project Coordinator and/or
12 On-Scene Coordinator from the Site shall not constitute an excuse
13 for halting or delaying the work required under this Amended
14 Order.

15 XV. REPORTING

16 40. Amsted shall deliver to EPA bi-weekly written progress
17 reports concerning the activities implemented under this
18 Amended Consent Order. At a minimum, progress reports shall
19 describe in reasonable detail: (1) Amsted's actions at the site,
20 including those actions which have been taken toward carrying out
21 the tasks required by this Amended Order; (2) all actions
22 scheduled for the next two week period; and (3) any problems or
23 difficulties encountered in Amsted's implementation of this
24 Amended Order and the steps Amsted has taken or intends to take
25 to correct any such problems or difficulties. Amsted shall
26 deliver these reports to EPA every other week by Friday noon

1 following the effective date of this Amended Order.

2 41. Amsted shall provide to EPA all reports, plans and
3 documents described in and set forth in the Statement of Work and
4 attached Work Plan, or any amended schedule approved in writing
5 by EPA. All reports, plans and deliverables specified in the
6 Statement of Work and attached Work Plan must be approved by EPA
7 in writing. Amsted shall not implement any tasks required by an
8 approvable deliverable prior to EPA's written approval of such
9 submittal, nor may Amsted deem a task complete until EPA has
10 approved Amsted's submittal of a final report.

11 XVI. EPA NOTICE OF DISAPPROVAL REGARDING REPORTS AND
12 ACTIVITIES

13 42. The EPA Project Coordinator and/or On-Scene Coordinator
14 will notify Amsted in writing within thirty (30) days of
15 receiving any progress, preliminary, draft, or final report or
16 other items described in the attached Statement of Work and
17 attached Work Plan, of (1) each activity, deviation, or delay
18 recited in such reports, to which EPA has an objection, (2) each
19 portion of such report EPA regards as deficient, and (3) the
20 appropriate directions to implement EPA requirements. In the
21 event that a longer review period is required, EPA may extend its
22 review period by notifying Amsted within twenty-five (25) days of
23 receipt of the document and identifying the additional time
24 needed. EPA will set forth in writing in reasonable detail its
25 reasons for any such objections and necessary revisions. Failure
26 of EPA to object to any of Amsted's reports, plans, activities,
27 deviations, or delays within thirty (30) days of such receipt or

1 notice shall not constitute a waiver of EPA's right to object at
2 a later time, provided however, that EPA shall not assess any
3 stipulated penalties for delays in Amsted's performance of a task
4 which result from EPA's delayed objection or delayed notice of
5 disapproval.

6 XVII. DISPUTE RESOLUTION

7 43. In the event of EPA disapproval, in whole or in part,
8 of any plan, proposal, report or "approvable deliverable"
9 required pursuant to this Amended Consent Order, EPA will specify
10 any disapproval or objection in writing, and the reasons for such
11 disapproval or objection. Amsted shall then implement EPA's
12 decision or directive as set forth in writing.

13 44. If Amsted disagrees, in whole or in part, with any such
14 approval, disapproval, decision, or directive, the dispute shall
15 be resolved as follows. Amsted shall state its objections with
16 any EPA disapproval or other written decision or directive, and
17 the basis thereof, in writing within fourteen (14) days after
18 receipt of EPA's disapproval, decision or directive. EPA and
19 Amsted shall then have an additional seven (7) calendar days from
20 EPA receipt of Amsted's objections to attempt in good faith to
21 resolve the dispute. If agreement is reached, the resolution
22 shall be set forth in a written statement, signed by the parties,
23 and incorporated into this Amended Consent Order. If agreement
24 is not reached on any such dispute within this seven (7) day
25 period, EPA shall provide a written statement of its decision to
26 Amsted which shall be incorporated into this Amended Consent

1 Order. Such decision shall be consistent with this Amended Order
2 and statutory authority. Within seven (7) days after receipt of
3 EPA's written statement, Amsted shall advise EPA in writing
4 whether Amsted will implement EPA's decision or directive as set
5 forth in the written statement. If Amsted fails or refuses to
6 carry out the directions or make the amendments specified by
7 EPA's written statements, EPA may elect to carry out the
8 directions or make the amendments itself and/or take any other
9 actions it deems necessary. Implementation of these dispute
10 resolution procedures shall not provide a basis for delay of any
11 other unrelated activities required by this Amended Order, unless
12 the On-Scene Coordinator agrees in writing to a schedule
13 extension.

14 XVIII. AVAILABILITY OF DATA

15 45. Amsted shall notify and make available to EPA and the
16 State of Washington Department of Ecology (hereinafter
17 "Ecology"), quality assured results of all sampling, testing, and
18 other (including QA/QC) data generated by Amsted, or on its
19 behalf, with regard to the site or implementation of this Amended
20 Consent Order, within seven (7) days after QA/QC review is
21 completed, but in no event later than 90 days after sampling or
22 field testing. The results of all such sampling, tests, and
23 other data shall be submitted to EPA in accordance with the
24 approved Statement of Work and attached Work Plan. Any proposals
25 for media sampling shall be supported by a Quality Assurance
26 Project Plan (QAPjP) and a Quality Assurance (QA) Plan specific

1 to the laboratory used. The laboratory must be of good standing
2 with EPA at the time the analyses are performed (i.e., the labs
3 must not appear on the General Services Administration List of
4 Excluded Parties). The QAPP and QA plans shall be submitted to
5 EPA for review and written approval prior to conducting any
6 sample analyses. In addition, all sampling data submitted to EPA
7 for all new wells, and to the extent possible from existing
8 wells, shall include the data required in the U.S. EPA Order
9 entitled, Regional Order for Groundwater Data Management
10 (7500.1).

11 46. At the request of EPA or Ecology, Amsted shall, at the
12 discretion of EPA and Ecology, provide, or allow EPA or Ecology
13 and/or their authorized representative(s) to take, discrete,
14 split or duplicate samples collected pursuant to this Amended
15 Order. Amsted shall provide notice to EPA and Ecology not less
16 than seventy-two (72) hours in advance of any sample collection
17 activity, excavation, or cleanup operations.

18 XIX. SITE ACCESS

19 47. Amsted shall provide EPA, Ecology, and/or their
20 authorized representatives the authority to enter and move freely
21 about all portions of the site at all reasonable times and upon
22 reasonable notice for the purposes of, inter alia: inspecting
23 records and operating logs relating to work undertaken pursuant
24 to this Amended Consent Order; reviewing Amsted's progress in
25 carrying out the terms of this Amended Consent Order; conducting
26 such tests as EPA or Ecology deem necessary; using camera, sound

1 recording or other documentary type equipment; and, verifying the
2 data submitted to EPA by Amsted. Amsted shall permit such
3 persons to inspect and copy all records, files, photographs,
4 documents, and other writings, including all sampling and
5 monitoring data (not otherwise provided to EPA pursuant to this
6 Amended Consent Order), pertaining to the work undertaken
7 pursuant to this Amended Consent Order.

8 48. Amsted may assert a confidentiality claim, if
9 appropriate, covering part or all of the information requested or
10 obtained by EPA under this Amended Consent Order, pursuant to
11 Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), as amended,
12 and EPA's regulations governing confidentiality of business
13 information set forth in 40 C.F.R. Part 2, Subpart B. Such an
14 assertion shall be adequately substantiated when the assertion is
15 made. Analytical data shall not be claimed as confidential by
16 Amsted. Information determined to be confidential by EPA will be
17 afforded the protection specified in 40 C.F.R. Part 2, Subpart B.
18 If no such claim accompanies the information when submitted to
19 EPA, such information may be made available to the public by EPA
20 without further notice to Amsted.

21 49. To the extent that tasks required by this Amended Order
22 require access to property within the site other than land Amsted
23 owns, Amsted has and will continue to obtain all necessary
24 written and signed access agreements for itself, its contractors
25 and agents, and EPA and Ecology and their contractors and agents,
26 from present owners and lessees.

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1 shall notify EPA of its intent to destroy any such records or
2 documents after such five (5) year period, and provide not less
3 than ninety (90) days following notification for EPA to inspect
4 and copy such records or documents.

5 XXII. DELIVERY OF DOCUMENTS

6 52. Documents, including reports and other correspondence,
7 submitted pursuant to this Amended Consent Order, shall be
8 delivered to the following persons at the address indicated, and
9 to such other persons as EPA may specify by written notice sent
10 to Amsted:

11 A. Four (4) copies of documents to be submitted to EPA
12 shall be sent to:

13 Christine Psyk
14 Superfund Branch (HW-113)
15 U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

16 B. One (1) copy of documents to be submitted to
17 Amsted shall be sent to:

18 Nathan Graves
19 Kennedy/Jenks/Chilton
33301 Ninth Avenue S., Suite 100
20 Federal Way, Washington 98003

21 XXIII. PROVISION OF OTHER DOCUMENTS

22 53. In addition to those reports and documents specifically
23 required by this Amended Order, upon EPA's request, Amsted shall
24 provide to EPA within ten (10) days of such request, copies of:
25 draft and final plans, draft and final task memoranda, including
26 memoranda recording minor field modifications, recommendations
27 for further action, quality assurance memoranda and audits, draft

1 and final reports, raw data, field notes, laboratory analytical
2 reports, sample results and any other documents which relate in
3 any way to the site, including those pertaining to any studies
4 relevant to, but not specifically required by this Amended Order.

5 XXIV. ADDITIONAL RESPONSE TASKS

6 54. EPA may, as it deems necessary consistent with federal
7 laws and regulations, determine that additional response tasks,
8 other than those set forth in the Statement of Work and attached
9 Work Plan, are necessary for an adequate cleanup of hazardous
10 substances at the site. EPA may afford Amsted the opportunity to
11 perform such tasks except in those areas where, in the judgment
12 of EPA, Amsted is not qualified to conduct the tasks or when the
13 need to take immediate action otherwise precludes such
14 opportunity. Such actions, tasks and remedies are outside the
15 scope of this Amended Order and are not governed by its terms.

16 XXV. REIMBURSEMENT OF COSTS

17 55. After the end of each federal fiscal year in which
18 Amsted performs work under this Amended Order, EPA will submit to
19 Amsted a detailed accounting of all costs incurred by and/or
20 billed to the United States after the effective date of this
21 Amended Consent Order in connection with response, oversight, and
22 community relations costs incurred by the United States
23 government and its contractors and representatives with respect
24 to the implementation of this Amended Order. For those costs
25 incurred during a fiscal year for which a detailed accounting has
26 not yet been prepared or for which EPA has not yet been billed at

1 the time the accounting is submitted to Amsted, EPA will
2 subsequently provide a supplemental detailed accounting of costs.
3 Upon request, Amsted shall have the right to examine additional
4 documents supporting the costs billed by EPA (excluding
5 privileged materials unless the privilege has been waived in
6 writing). Following a review of the detailed accounting
7 information and/or supporting documentation provided by EPA,
8 Amsted reserves the right to dispute costs which it believes are
9 not consistent with the National Contingency Plan (NCP). To the
10 extent costs are disputed by Amsted, the contested item(s) shall
11 be subject to the Dispute Resolution Procedures set forth in
12 Paragraph 44 above. To the extent that costs are not disputed,
13 Amsted shall, within sixty (60) days of receipt of accounting,
14 remit a certified check or money order for the amount of all
15 costs due under Section 107 of CERCLA, 42 U.S.C. § 9607, made
16 payable to the Hazardous Substance Response Trust Fund, with a
17 copy of such transaction sent to the EPA Project/On-Scene
18 Coordinator. Remittances should specifically reference the
19 identity of the Site and be addressed to:

20 U.S. Environmental Protection Agency Region 10
21 Superfund Accounting
22 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251.

23 with a copy of the transaction sent to:

24 Regional Hearing Clerk
25 U.S. E.P.A. Region 10, Office of Regional Counsel
26 SO-125
1200 Sixth Avenue
Seattle, Washington 98101

27 56. EPA reserves the right to bring an action against

1 Amsted under Section 107 of CERCLA, 42 U.S.C. § 9607, for
2 recovery of all past response costs incurred by the United States
3 at the site not reimbursed by Amsted, including, but not limited
4 to, costs incurred in implementing this Amended Order which are
5 not paid, any costs incurred in the performance of the remedial
6 investigation and feasibility study, as well as any future costs
7 incurred by the United States in connection with response
8 activities conducted under CERCLA at this site.

9 XXVI. DELAY IN PERFORMANCE AND FORCE MAJEURE

10 57. If any event occurs which causes delay in the
11 achievement of any of the requirements of this Amended Consent
12 Order, Amsted shall promptly, but in no event later than
13 forty-eight (48) hours of such event, notify EPA orally. Within
14 seven (7) days of such event, Amsted shall notify EPA in writing
15 of the nature of the delay, the anticipated duration and cause of
16 the delay, the measures taken and to be taken by Amsted to
17 prevent or minimize the delay, the schedule by which Amsted
18 intends to implement these measures, and whether the delay may,
19 in the opinion of Amsted, cause or contribute to an endangerment
20 to public health, welfare, or the environment.

21 58. If Amsted demonstrates to the satisfaction of EPA that
22 the delay or anticipated delay has been or will be caused by
23 circumstances beyond the control and despite the due diligence of
24 Amsted, the time for performance of such requirements under this
25 Amended Order shall be extended for a period equal to such delay
26 if EPA agrees in writing that the delay was beyond Amsted's

1 control and that Amsted exercised due diligence. If Amsted fails
2 to provide the notice to EPA as required in the preceding
3 paragraphs, it shall not receive an extension of time for
4 performance of the affected work. Neither increased costs nor
5 the expenses of performance of any requirements of this Amended
6 Order or changed business or economic circumstances shall be
7 considered circumstances beyond the control of Amsted for
8 purposes of this section.

9 59. Pursuant to paragraph 3, with respect to EPA actions,
10 delays in governmental approvals which preclude Amsted's
11 compliance with applicable work schedules or deadlines, shall be
12 a basis for an extension of time for Amsted's performance of such
13 work commensurate with the period of government delay. Any
14 schedule extensions caused by operation of this paragraph shall
15 be confirmed in writing by EPA.

16 XXVII. STIPULATED PENALTIES

17 60. Amsted hereby agrees to conduct a removal of the
18 hydrocarbon product in MW-2 without regard to whether the
19 hydrocarbon product is a CERCLA regulated waste. Amsted will
20 conduct such removal in a timely and diligent manner. If Amsted
21 fails to conduct the agreed upon removal in a timely and diligent
22 manner, EPA will so advise Amsted by way of written notification.
23 Thereafter, the following stipulated penalties will be assessed
24 commencing on the fifth calendar day after Amsted's receipt of
25 notification by EPA:

26 A. Failure to complete the tasks outlined in and in

1 accordance with the Statement of Work, attached Work Plan and the
2 project schedule provided in the Work Plan to: (1) drill and
3 install wells; (2) monitor wells no less than the maximum
4 monitoring interval of two weeks noted in the attached Work Plan;
5 and (3) submit a draft report and necessary supplemental work
6 plans ; will accrue stipulated penalties in amounts of \$150.00
7 per day for the first week of violation; of \$500.00 per day for
8 the second week of violation; of \$2,500.00 per day for the third
9 week of violation or delay and each day thereafter.

10 B. Failure to submit any information or reports required
11 by this Amended Order, or attached Statement of Work, including
12 bi-weekly progress reports; will accrue stipulated penalties in
13 the amount of \$75.00 per day for the first week of violation or
14 delay, of \$300.00 per day for the second week of violation or
15 delay and of \$750.00 per day for the third week of violation or
16 delay and each day thereafter.

17 61. In accordance with Paragraph 60, Amsted shall pay into
18 the Hazardous Substances Superfund the sums set forth above as
19 stipulated penalties. Certified checks or money orders should be
20 made out to the Hazardous Substances Superfund and addressed to:
21 U.S. Environmental Protection Agency
22 Region 10
23 Superfund Accounting
24 P.O. Box 360903M
25 Pittsburgh, Pennsylvania 15251.

26 XXVIII. OTHER EPA REMEDIES

27 62. The conditional stipulated penalties set forth above do
28 not preclude EPA from electing to pursue any other remedies or
sanctions which may be available to EPA by reason of Amsted's

1 failure to comply with any of the requirements of this Amended
2 Consent Order. Such remedies and sanctions include a suit for
3 statutory penalties as authorized by Sections 106 and 109 of
4 CERCLA/SARA, 42 U.S.C. § 9606 and 9609, a federally-funded
5 response action, issuance of a unilateral order pursuant to
6 Section 106 of CERCLA, 42 U.S.C. § 9606, as amended, or a suit
7 for exoneration/reimbursement of costs incurred by the United
8 States.

9 XXIX. RESERVATION OF RIGHTS

10 63. Notwithstanding compliance with the terms of this
11 Amended Consent Order, Amsted is not released from any of its
12 liabilities, if any, for costs of any response actions outside
13 the terms of this Amended Order taken by EPA respecting the site,
14 and EPA reserves all rights and defenses that it may have related
15 thereto.

16 64. EPA reserves the right to take any action pursuant to
17 CERCLA or any other legal authority, including the right to seek
18 injunctive relief, reimbursement, statutory penalties, or
19 punitive damages, and to undertake any further removal,
20 investigation, remedial, or other response activities at the site
21 otherwise authorized by law. EPA reserves the right to inspect
22 the site at any time under any applicable law or regulation and
23 to enforce such laws or regulations.

24 65. Amsted, any parent corporation(s), subsidiary
25 corporation(s), and their directors, officers, employees or
26 persons connected thereto, agree not to petition the EPA

1 Hazardous Substance Response Trust Fund pursuant to 42 U.S.C. §
2 9606(b) for those response costs agreed to be undertaken as
3 provided for in this Amended Order. Nothing in this Order
4 precludes Amsted from exercising its rights under Section 113(f)
5 of CERCLA, 42 U.S.C. § 9613(f), to seek contribution from any
6 person, who is liable or potentially liable under Section 107(a)
7 of CERCLA, 42 U.S.C. § 9607(a), or otherwise liable, or to seek
8 indemnification from any person other than EPA and the Hazardous
9 Substance Response Trust Fund with respect to those response
10 activities which Amsted has agreed to undertake pursuant to this
11 Amended Order as provided above.

12 66. EPA reserves the right to conduct other investigations
13 or to undertake removal or remedial actions at any time. In
14 addition, EPA reserves the right to seek damages or
15 exoneration/reimbursement from Amsted or any other person for
16 such costs incurred by the United States government for actions
17 outside of the scope of this Amended Consent Order.

18 XXX. OTHER CLAIMS

19 67. Nothing in this Amended Order shall constitute or be
20 construed as a release from any claim, cause of action or demand
21 in law or equity against any person, firm, partnership,
22 corporation, or state or local governmental entity not a
23 signatory to this Amended Order for any liability it may have
24 arising out of or relating in any way to the generation, storage,
25 treatment, handling, transportation, disposal, release, or threat
26 of release of hazardous substances, hazardous wastes, pollutants,

1 or contaminants found at, taken to, or taken from the site. This
2 Amended Order does not preauthorize or constitute any decision on
3 preauthorization of funds under Section 111(g)(2) of Cercla, 42
4 U.S.C. § 9611(a)(2).

5 XXXI. OTHER APPLICABLE LAWS

6 68. All actions required to be taken pursuant to this
7 Amended Consent Order shall be performed in accordance with the
8 requirements of all applicable federal, state and local laws and
9 regulations. State and federal requirements which are applicable
10 or relevant and appropriate shall be considered in the evaluation
11 of alternatives in Amsted's Statement of Work and attached Work
12 Plan. Off-site disposal of hazardous substances, if undertaken
13 pursuant to this Amended Consent Order, shall comply with the EPA
14 Off-Site Response Action Policy dated May 6, 1985, 50 Fed. Reg.
15 45933 (November 5, 1985), as amended in EPA's November 13, 1987
16 "Revised Procedures for Planning and Implementing Off-site
17 Response Actions," Section 3004(d)(3) of the Resource
18 Conservation and Recovery Act, 42 U.S.C. § 6924(d)(3), and
19 Section 121(d)(3) of CERCLA 42 U.S.C. § 9621(d)(3), as amended.

20 XXXII. EXONERATION/INDEMNIFICATION

21 69. The United States including its agencies, offices,
22 employees and agents, shall not be liable for any injuries or
23 damages to persons or property resulting from acts or omissions
24 by Amsted, its officers, employees, receivers, trustees, agents
25 or contractors in carrying out activities pursuant to this
26 Amended Consent Order; nor shall the United States be deemed a

1 party to any contract made by Amsted or its agents in carrying
2 out activities pursuant to this Amended Consent Order. Amsted
3 shall save and hold harmless the United States, its agencies,
4 officers, employees, and agents from, and shall indemnify the
5 United States against and for, any and all claims or causes of
6 action arising from or on account of acts or omissions of Amsted
7 and their representatives, relating in any way to carrying out
8 activities pursuant this Amended Consent Order.

9 XXXIII. COMMUNITY RELATIONS

10 70. Community relations activities relevant to the
11 implementation of this Amended Order are the primary
12 responsibility of EPA and its representatives. Amsted shall
13 provide appropriate assistance upon EPA's request, and may
14 undertake its own community relations activity program provided
15 Amsted coordinates such activities with EPA (including the
16 submittal of any materials to be released to the public or press
17 regarding the site or cleanup to EPA no less than seven (7)
18 calendar days prior to release). EPA reserves the right to
19 object in writing to the contents of these materials within 10
20 days of their receipt. EPA and Amsted further agree to cooperate
21 in the conduct of such activities.

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1 XXXIV. PERSONS BOUND

2 71. This Amended Consent Order shall apply to and be
3 binding upon Amsted and its officers, employees, subsidiaries,
4 agents, successors, assigns, contractors, and consultants acting
5 under or for Amsted. Amsted remains obligated by this Amended
6 Consent Order regardless of any change in ownership of the
7 facility or site, and regardless of its intent made to carry out
8 the terms through agents, contractors and consultants.

9 XXXV. NOTICE TO THE STATE

10 72. The State of Washington has been notified through its
11 Department of Ecology.

12 XXXVI. EFFECTIVE DATE

13 73. The effective date of this Amended Consent Order is the
14 date on which it is signed by the EPA Superfund Branch Chief,
15 Region 10. EPA shall make every effort to send the Amended Order
16 to Amsted within a day of when it is signed by next day mail.
17 Not later than ten (10) calendar days after the date of this
18 Order, Amsted shall commence work in accordance with the attached
19 Statement of Work and attached Work Plan.

20 XXXVII. COMPUTATION OF TIME

21 74. Any time period scheduled to begin on the occurrence of
22 an act or event shall begin on the day after the act or event.
23 If the final day of any time period falls on a weekend or legal
24 holiday, the time shall be extended to the next working day. All
25 time periods and schedules are in calendar days.

1 XXXVIII. AMENDMENTS

2 75. This Amended Consent Order may be amended by mutual
3 agreement of EPA and Amsted. Agreed amendments to this Amended
4 Consent Order shall be in writing and shall have as the effective
5 date, that date on which such amendments are signed by the EPA
6 Superfund Branch Chief, Region 10. The parties' project
7 coordinators and/or EPA's On-Scene Coordinator designated in
8 paragraphs 35 and 38 of this Amended Order shall be authorized,
9 to extend by mutual written agreement, any date, deadline or
10 schedule in the attached Scope of Work, Schedule of Activities,
11 or approved plans.

12 XXXIX. DISTRIBUTION OF ORDER

13 76. Amsted shall provide a copy of this Amended Order and
14 all accompanying attachments, exhibits and schedules to all
15 contractors, sub-contractors, laboratories, and consultants
16 retained to conduct any portion of the work to be performed
17 pursuant to this Amended Order, not later than five (5) calendar
18 days after the effective date of this Amended Order or date of
19 such retention, whichever is later.

20 XL. SATISFACTION OF ORDER

21 77. This Amended Order shall be deemed satisfied upon
22 receipt by Amsted of written approval by EPA of Final Summary
23 Report required by the schedule of Deliverables, stating to the
24 effect that all provisions of this Amended Consent Order have
25 been satisfied.

26 The undersigned, by affixing signature below, hereby

1 represents that he has the authority to bind Amsted Industries,
2 Inc.

3 STIPULATED, AGREED, AND
4 APPROVED FOR ISSUANCE

5 AMSTED INDUSTRIES, INC.,
Respondent

6 By:

Eded J Brosius

17 FEBRUARY 1992
Date

7
8 Printed Name: EDWARD J. BROSIUS

9 Title: ASSISTANT GENERAL COUNSEL AND ASSISTANT SECRETARY
10 Amsted Industries, Inc.

11 IT IS SO ORDERED, this 5th day of March 1992

12 UNITED STATES ENVIRONMENTAL
13 PROTECTION AGENCY

14
15 By:

Carol Rushin for
16 PHILIP G. MILLAM, Chief
17 Superfund Branch
18 EPA Region 10
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1 represents that he has the authority to bind Amsted Industries,
2 Inc.

3 STIPULATED, AGREED, AND
4 APPROVED FOR ISSUANCE

5 AMSTED INDUSTRIES, INC.,
6 Respondent

7 By: Edward J. Brosius

17 FEBRUARY 1992
Date

8 Printed Name: EDWARD J. BROSIUS

9 Title: ASSISTANT GENERAL COUNSEL AND ASSISTANT SECRETARY
10 Amsted Industries, Inc.

11 IT IS SO ORDERED, this _____ day of _____ 1992

12 UNITED STATES ENVIRONMENTAL
13 PROTECTION AGENCY

14
15 By: _____
16 PHILIP G. MILLAM, Chief
17 Superfund Branch
18 EPA Region 10

	INITIALS:	SURNAME:	DATE:	CONCURRENCE		
19	<u>mm</u>	<u>Kirk</u>	<u>2/28/92</u>	<u>Ed K</u>	<u>C. Psyk</u>	<u>K. Oates</u>
20				<u>Kowalski</u>	<u>Psyk</u>	<u>OATES</u>
21				<u>3/2/92</u>	<u>3/2/92</u>	<u>3/3/92</u>

22 INITIALS: _____
23 SURNAME: _____
24 DATE: _____